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PATENT APPLICATION

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IN THE

UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Robert C. LEHR, et al.

Confirmation No.: 8861

Application No.: 10/045,151

Examiner: Michael J. Fisher

Filing Date: January 15, 2002

Group Art Unit: 3629

HARDWARE PAY-PER-USE

Title:

Mail Stop Appeal Brief-Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on June 21, 2007.

The fee for filing this Appeal Brief is \$510.00 (37 CFR 41.20).
 No Additional Fee Required.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

(a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

1st Month
\$120

2nd Month
\$460

3rd Month
\$1050

4th Month
\$1640

The extension fee has already been filed in this application.
 (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of \$ 510. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees.

A duplicate copy of this transmittal letter is enclosed.

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Respectfully submitted,

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By _____

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicant : Robert C. LEHR, et al.
Filed : January 15, 2002
Title : HARDWARE PAY-PER-USE
TC/A.U. : 3629
Examiner : Michael J Fisher
Docket No. : 100201014-1
Customer No. : 022879

Mail Stop Appeal Brief - Patents
Commissioner of Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

CORRECTIVE APPEAL BRIEF UNDER 37 C.F.R. §41.37

Dear Sir:

Please note this is a **Corrective Appeal Brief Under 37 C.F.R. §41.37** to correct deficiencies found on section **V** of the instant brief. Corrections made to section **V** appear under bold.

10/19/2007 AWONDAF1 00000018 082025 10045151
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I. REAL PARTY IN INTEREST

Hewlett Packard Company is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

There are no other related appeals or interferences.

III. STATUS OF CLAIMS

Claims 1 - 16 and 18 - 61 are pending. Claims 1 - 16 and 18 - 61 are rejected.
Applicants appeal the rejection of claims 1 - 16 and 18 - 61.

IV. STATUS OF AMENDMENTS

There are no amendments filed after final.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Appellants have discovered a new, improved method, and a corresponding mechanism, that allow computer system operators to tailor their hardware utilization to more closely match changing customer demands. The method and mechanism incorporate flexible pay-per-use pricing plans based on data gathered from the computer system by a separate and distinct hardware device.

The invention recited in claim 1 is a hardware pay-per-use system, which is shown, for example, in Figure 2, and described in the specification at least at page 4, line 10 to page 10, line 20. The system 100 includes metering mechanism 113, which is coupled to hardware products 112 and to a usage repository 120. The metering mechanism 113 is a hardware device separate from the hardware products 112. The metering mechanism 113 determines data to report on the operation of the hardware products 112.

The invention recited in claim 18 is a method 200, shown in Figure 4, and described in the accompanying text, **at page 15, line 8 to page 16, line 26**, for pricing hardware on a pay-per-use basis, wherein one or more hardware products 112 (see Figure 2) are coupled to a communications network. In Figure 4, the method 200 includes the steps of acquiring (215), in a hardware device (metering mechanism 113 of Figure 2) separate from the one or more hardware products, metrics data related to an operation of the one or more hardware products; determining (225) data to report based on the acquiring step; sending (230) the determined data to a usage repository; generating (250) a usage report; and generating (255) a pay-per-use invoice based on the usage report.

The invention recited in claim 19 is a method, also shown in Figure 4, **and described at page 15, line 8 to page 16, line 26**, for pricing hardware on a pay-per-use basis, wherein one or more hardware products 112 (see Figure 2) are coupled to a communications network. In Figure 4, method 200 includes the steps of acquiring (215), in a hardware device (metering mechanism 113 of Figure 2) separate from the one or more hardware products, metrics data related to an operation of the one or more hardware products; determining (225) data to report based on the acquiring step; sending (230) the determined data to a usage repository; and receiving (260) a pay-per-use invoice, wherein the pay-per-use invoice is based on the data sent to the usage repository.

The invention recited in claim 20, is a method, also shown in Figure 4, **and described at page 15, line 8 to page 16, line 26**, for pricing hardware on a pay-per-use basis, wherein one or more hardware products 112 (see Figure 2) are at a node coupled to a communications

network. Method 200 includes the steps of receiving (235), at a usage repository, metrics data based on an operation of the one or more hardware products, wherein the metrics data are provided by a metering mechanism (113 - see Figure 2) separate from the one or more hardware products; generating (250) a usage report; generating (255) a pay-per-use invoice based on the usage report; and presenting (260) the invoice to the node.

The invention recited in claim 27 is a method 200 for pricing a hardware product 112 based on operating data collected from the hardware product. Referring to Figures 2 and 4 and their accompanying description **at page 4, line 10 to page 12, line 14 and page 15, line 8 to page 16, line 26, respectively**, the method 200 includes the steps of providing (215) a metering mechanism 113, separate from the hardware product 112, wherein the metering mechanism obtains the operating data from the hardware product; providing the obtained operating data to a processing device, wherein usage data are calculated (220, 225, 240); and generating (255) a pay-per-use invoice based on the usage data and a pay-per-use pricing plan.

The invention recited in claim 37 is a pay-per-use hardware financing plan. The plan is based on the flowchart shown in Figure 4 and disclosed **at page 15, line 8 to page 16, line 26**, and includes providing a hardware product to a client at a client site; providing a pay-per-use plan, the plan based on at least one metric acquired from the hardware product; and providing the client site with a mechanism, separate from the hardware product, that acquires the at least one metric, and transmits the at least one metric to a location remote from the client site.

The invention recited in claim 45 is a hardware pay-per-use system (see Figure 2, and accompanying description **at page 4 line 10 to page 14, line 10**) comprising means 113 for receiving metrics data from one or more hardware products 112; means (130, 140), coupled to the receiving means, for computing usage and billing data from the received metrics data; and means (140), coupled to the computing means, for generating an invoice based on the computed usage and billing data.

The invention recited in claim 53 is a device, shown in Figures 2 and 3, and described in the accompanying text **and accompanying description at page 4 line 10 to page 14, line 10**, for acquiring metrics data from hardware products 112 in a hardware pay-per-use system 100. The device 113 is coupled to the hardware products 112, and includes a rules engine 151 comprising one or more business rules for acquiring the metrics data; a processor 153 coupled to the rules engine, wherein the processor controls operation of the device; and a data acquisition engine 159 coupled to the processor, the data acquisition engine comprising

programming whereby the metrics data are acquired from the hardware products, the programming including a transport protocol and interface for transporting the metrics data from the hardware products to the device, and wherein the device 113 is distinct from the hardware products 112.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claim 47 is rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement, as directed to non-statutory subject matter. More specifically, the Examiner asserts that claim 47 recites hardware on a digital site. “While hardware can contain the code for a digital site, it cannot be on a digital site as the site is digital [software] and the hardware is corporeal.”

Claims 1, 2, 9, 13, 18 - 25, 27, 29 - 31, 35, 37, 39, 40, 45, 46, and 50 are rejected under 35 U.S.C. § 102 (b) “as being anticipated by telephone companies” In particular, the Examiner asserts that “it is old and well known for telephone companies to provide one or more hardware products (telephones), a metering mechanism coupled to the hardware products that acquires metrics data from the hardware product [sic], the metering data determines data to report on the operation of the products and generates reports, the metering mechanism is inherent in that bills are generated based on telephone usage and these inherently come from metering.”

Claims 1 - 4, 8 - 12, 16, 18 - 25, 27, 28, 32, 35, 37 - 41, 44, 45, 48, and 50 - 54 are rejected under 35 U.S.C. § 102(b) over U.S. Patent 5,745,884 to Carnegie et al. (hereafter Carnegie). The Examiner contends that Carnegie discloses “a hardware pay per use system (title) comprising one or more hardware products (col 4, lines 53 - 56), a metering agent that acquires metrics data (306, 316, as best seen in fig. 3), and a usage repository that generates reports on the received data (308, 318).”

Claims 5 - 7, 13 - 15, 26, 29 - 31, 33, 34, 36, 42, 43, 46, 49, and 55 - 61 under 35 U.S.C. § 103(a).

VII. ARGUMENT

A. REJECTIONS UNDER 35 U.S.C. 112, FIRST PARAGRAPH

The examiner rejects claim 47 under 35 U.S.C. § 112, first paragraph. In particular, the Office Action states that claim 47 “claims that hardware is on a digital site” and then the Office Action asserts that “[w]hile hardware can contain the code for a digital site, it cannot be on a digital site as the site is digital [software] and hardware is corporeal.” This rejection of claim 47 is respectfully traversed.

Applicant disagrees with the examiner: Claim 47 recites a “client site is on a digital communications network.” In other words, the client site is a node in a digital network. Anybody with ordinary skill in the art knows that a digital communications network comprises both software and hardware aspects. An example of such a communications network is a wide area (digital) network WAN). The best known WAN is the Internet. That is, the Internet is a digital communications network. The Internet comprises many hardware devices (servers, computers, mass storage units, switches, routers) that reside at various nodes of the Internet. The Examiner’s rejection of claim 47 because, through claim 46, it recites hardware on a digital communications network is at odds with one of the most ubiquitous features of the modern world! Clearly, a digital communications network MUST have some hardware aspects! Accordingly, claim 47 is patentable under 35 U.S.C. § 112, first paragraph.

B. REJECTIONS UNDER 35 U.S.C. § 102 (b) OVER THE PLAIN OLD TELEPHONE SYSTEM

The Examiner rejects claims 1, 2, 9, 13, 18 - 25, 27, 29 - 31, 35, 37, 39, 40, 45, 46, and 50 under 35 U.S.C. § 102 (b) “as being anticipated by telephone companies” In particular, and considering independent claims 1, 18 - 20, 27, 37, and 45, the Examiner asserts that “it is old and well known for telephone companies to provide one or more hardware products (telephones), a metering mechanism coupled to the hardware products that acquires metrics data from the hardware product [sic], the metering data determines data to report on the operation of the products and generates reports, the metering mechanism is inherent in that bills are generated based on telephone usage and these inherently come from metering.”

In essence, the Examiner is relying “taking official notice” of supposed facts in order to support the rejection of these claims. Nowhere does the Examiner provide any documentation to support this rejection. In section 2144.03, the MPEP states “It would not be appropriate for the examiner to take official notice of facts without citing a prior art

reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.”

Applicant respectfully disagrees that all the elements of the independent claims are disclosed by any plain old telephone system (POTS). In accordance with MPEP 2144.03, Applicant has asked the Examiner to provide specific documentary evidence to support the rejection of claims 1, 18 - 20 27, 37, and 45, and their respective dependent claims 2, 9, 13, 21 - 25, 29 - 31, 35, 39, 40, 46, and 50. Applicant cannot respond completely to this undocumented rejection. The Examiner should be required to provide a documentary reference to support the rejection. But, assuming *arguendo*, that the examiner has raised a valid *prima facie* basis for rejecting the claims in view of the POTS, a careful review of the POTS reveals that, in fact, this system does not anticipate the claimed subject matter.

1. Claim 1

More specifically, and considering claim 1, Applicant contends that no POTS ever included a “metering mechanism [that] determines data to report on the operation of the one or more hardware products” (emphasis added), as recited in claim 1. Referring to the specification, metering mechanism 113 determines what data to report. The metering mechanism 113 is shown in Figure 3, and is described in detail at least at page 6, line 4 to page 12, line 21. The metering mechanism 113 includes a rules engine 151, a processor 153, and a data acquisition engine 159 that work in together to acquire, process, and report specific data related to the usage of the hardware device. In terms of determining what data to report, the processor 153 and the rules engine 151 may, for example, determine an average CPU utilization for each five minute interval in a day. See page 11, lines 5 - 9.

2. Claims 18 - 20

Claims 18 - 20 are method claims that each recite metrics data gathered using a hardware device (metering mechanism 113 of Figures 2 and 3) separate from a hardware product 112. Claims 18 and 19 recite the step of determining data to report based on the acquired metrics data.

3. Claim 27

Method claim 27 recites a “providing a metering mechanism, separate from the hardware product, wherein the metering mechanism obtains the operating data from the hardware product; and providing the obtained operating data to a processing device, wherein usage data are calculated.” In the POTS, phone usage is not calculated; instead, phone usage is recorded. In the POTS, charges for phone usage are calculated based on the recorded usage, and not on any calculation.

4. Claim 37

Claim 37 recites a pay-per-use financing plan comprising ... providing the client site with a mechanism, separate from the hardware product, that acquires the at least one metric, and transmits the at least one metric to a location remote from the client site.” In the POTS, when a telephone was used to initiate a call, the measurement of time of call, and call routing (e.g., long distance) occurred at the telephone system remote switching center, and not at the telephone itself. Since the telephone would be at a location corresponding to the client site, the POTS does not anticipate all the elements of claim 37, for example, the above-cited “providing the client site with a mechanism, separate from the hardware product” Accordingly, claim 37 is patentable in view of the POTS.

5. Claim 45

Claim 45 is written in means-plus-function format, and recites, *inter alia*, means for receiving metrics data from the one or more hardware products and means for computing usage and billing data from the received metrics data. The structures disclosed to execute these functions are the metering mechanism 113 and the usage repository 120, and the billing and accounting system 140. The POTS does not use or suggest the use of such structures to accomplish these functions. Accordingly, claim 45 is patentable in view of the POTS.

Because, as Applicant believes, the POTS does not disclose all the elements of claims 1, 18 - 20, 27, 37, and 45, these claims are patentable. Claims 2, 9, 13, 21 - 25, 29 - 31, 35, 39, 40, 46, and 50 depend from their respective patentable base claims 1, 20, 27, 37, and 45, and for this reason and the additional features they recite, claims 2, 9, 13, 21 - 25, 29 - 31, 35, 39, 40, 46, and 50 also are patentable.

C. REJECTIONS UNDER 35 U.S.C. § 102 (b) OVER U.S. PATENT 5,745,884

The Office Action rejects claims 1 - 4, 8 - 12, 16, 18 - 25, 27, 28, 32, 35, 37 - 41, 44, 45, 48, and 50 - 54 under 35 U.S.C. § 102(b) over U.S. Patent 5,745,884 to Carnegie et al. (hereafter Carnegie).

The Office Action contends that Carnegie discloses “a hardware pay per use system (title) comprising one or more hardware products (col 4, lines 53 - 56), a metering agent that acquires metrics data (306, 316, as best seen in fig. 3), and a usage repository that generates reports on the received data (308, 318).”

Carnegie is directed to a system for collecting revenues from computer users when those computer users connect their computers through a public network, such as the Internet, to their home network or local area network. See, e.g., Abstract, column 4, lines 30 - 32. Carnegie does not disclose or suggest collecting metrics information related to the operation

of the computers, merely the act of connection. See also, column 5, lines 45 - 52: Each time a remote user becomes connected to a home system ... the information may be stored for billing purposes on a per user, per connection basis." Clearly, Carnegie's system relates only to connectivity, not operation.

In contrast to Carnegie, each of the independent claims 1, 18 - 20, 27, 37, 45, and 53 recites a metering mechanism (or corresponding method) that acquires metrics data related to an operation at the hardware products, wherein the metering mechanism determines data to report on the operation of the hardware products. Because Carnegie does not disclose or suggest all the elements of claims 1, 18 - 20, 27, 37, 45, and 53, these claims are patentable.

Claims 2 - 4, 8 - 12, 16, 21 - 25, 28, 32, 35, 38 - 41, 44, 48, and 50 - 54 depend, respectively, from claims 1, 20, 27, 37, 45, and 53, and for this reason and the additional features they recite, claims 2 - 4, 8 - 12, 16, 21 - 25, 28, 32, 35, 38 - 41, 44, 48, 50 - 52, and 54 also are patentable.

D. REJECTIONS UNDER 35 U.S.C. § 103(a)

The Office Action rejects claims 5 - 7, 13 - 15, 26, 29 - 31, 33, 34, 36, 42, 43, 46, 49, and 55 - 61 under 35 U.S.C. § 103(a) over Carnegie.

Claims 5 - 7, 13 - 15, 26, 29 - 31, 33, 34, 36, 42, 43, 46, 49, and 55 - 61 depend, respectively, from patentable claims 1, 20, 27, 37, 45, and 53. For this reason and the additional features they recite, claims 5 - 7, 13 - 15, 26, 29 - 31, 33, 34, 36, 42, 43, 46, 49, and 55 - 61 also are patentable.

The appeal brief fee in the amount of **\$510.00** is being authorized to be paid in the accompanying transmittal letter. However, should there be any additional fees required for this appeal brief, please charge any fees required or credit any over payment to **Deposit Account 08-2025** pursuant to 37 CFR 1.25.

Respectfully submitted,

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Date: October 18, 2007

VIII. CLAIMS APPENDIX

1. (original): A hardware pay-per-use system, comprising:

one or more hardware products;
a metering mechanism coupled to at least one of the one or more hardware products, wherein the metering mechanism includes a hardware device separate from the one or more hardware products, wherein the metering mechanism acquires metrics data from the one or more hardware products, the metrics data related to an operation at the one or more hardware products, and wherein the metering mechanism determines data to report on the operation of the one or more hardware products; and

a usage repository coupled to the metering mechanism, the usage repository receiving the determined data and generating usage reports related to the operation of the one or more hardware products.

2. (currently amended): The system of claim 2 1, further comprising a billing and accounting system, coupled to the usage repository, the billing and accounting system receiving the usage reports, wherein a pay-per-use invoice is determined based on the usage reports.

3. (original): The system of claim 2, further comprising a portal coupled to the usage repository and the billing and accounting system, wherein the portal, comprises:

a usage reports mechanism, wherein the usage reports are displayable;
an invoice presentation mechanism, wherein the invoice is presentable; and
an invoice payment mechanism, wherein a payment on the invoice is receivable.

4. (original): The system of claim 1, wherein the usage repository, comprises:

a validation server; and

a usage database coupled to the validation server, wherein the validation server validates the determined data received at the usage repository and verifies a correct configuration of the one or more hardware products, and wherein the usage database stores the determined data and the usage reports.

5. (original): The system of claim 1, wherein the metering mechanism is a rack-mountable hardware device in a networked computer system.

6. (original): The system of claim 1, wherein the metering mechanism is a standalone computer.

7. (original): The system of claim 1, wherein the metering mechanism is a part of a server coupled to the one or more hardware products.

8. (original): The system of claim 1, wherein one or more of the one or more hardware products comprise metering agents that collect the metrics data acquired by the metering mechanism.

9. (original): The system of claim 1, wherein the metering mechanism comprises a rules engine, and wherein rules in the rules engine are used to determine the data to report.

10. (original): The system of claim 1, wherein the metering mechanism comprises a polling engine, wherein the metering mechanism polls the one or more hardware products to acquire the metrics data.

11. (currently amended): The system of claim 1, wherein the one or more leased hardware products provide the metrics data on a periodic basis.

12. (original): The system of claim 1, wherein the operation is central processor unit (CPU) utilization.

13. (original): The system of claim 1, wherein the one or more hardware products are leased.

14. (original): The system of claim 1, wherein the metering mechanism is located at a first site, which is a same site as the one or more hardware products, and the usage repository is located at a second site remote from the first site.

15. (currently amended): The system of claim 1 14, wherein the first site and the second site are Internet Web sites.

16. (original): The system of claim 1, wherein the metering mechanism and the usage repository are located at a site remote from the one or more hardware products.

17. (cancelled):

18. (original): A method for pricing hardware on a pay-per-use basis, wherein one or more hardware products are coupled to a communications network, comprising:

acquiring, in a hardware device separate from the one or more hardware products, metrics data related to an operation of the one or more hardware products;

determining data to report based on the acquiring step;

sending the determined data to a usage repository;

generating a usage report; and

generating a pay-per-use invoice based on the usage report.

19. (original): A method for pricing hardware on a pay-per-use basis, wherein one or more hardware products are coupled to a communications network, comprising:

acquiring, in a hardware device separate from the one or more hardware products, metrics data related to an operation of the one or more hardware products;

determining data to report based on the acquiring step;

sending the determined data to a usage repository; and

receiving a pay-per-use invoice, wherein the pay-per-use invoice is based on the data sent to the usage repository.

20. (original): A method for pricing hardware on a pay-per-use basis, wherein one or more hardware products are at a node coupled to a communications network, comprising:

receiving, at a usage repository, metrics data based on an operation of the one or more hardware products, wherein the metrics data are provided by a metering mechanism separate from the one or more hardware products;

generating a usage report;

generating a pay-per-use invoice based on the usage report; and

presenting the invoice to the node.

21. (original): The method of claim 20, further comprising receiving a payment on the invoice.

22. (original): The method of claim 20, wherein generating the usage report, comprises:

applying one or more rules to the metrics data, wherein application of the rules processes the metrics data into a data structure representing an operation of the one or more hardware products.

23. (original): The method of claim 22, wherein generating the pay-per-use invoice comprises comparing the usage reports to a pay-per-use pricing plan, wherein the pricing plan specifies a finance rate component based on the metrics data.

24. (original): The method of claim 23, wherein the finance rate component varies with variations in the metrics data.

25. (original): The method of claim 22, wherein the received metrics data is determined based on one or more supplied business rules.

26. (original): The method of claim 25, wherein the operation relates to central processor utilization over a given time interval, and wherein an applied business rules require reporting a peak utilization over the time interval.

27. (original): A method for pricing a hardware product based on operating data collected from the hardware product, comprising:

providing a metering mechanism, separate from the hardware product, wherein the metering mechanism obtains the operating data from the hardware product; and

providing the obtained operating data to a processing device, wherein usage data are calculated; and

generating a pay-per-use invoice based on the usage data and a pay-per-use pricing plan.

28. (original): The method of claim 27, further comprising providing the metering mechanism with a polling function, wherein the hardware product is polled to obtain the operating data.

29. (original): The method of claim 27, wherein the hardware product is leased, wherein the pay-per-use invoice is presented to a lessee of the hardware product.

30. (original): The method of claim 29, further comprising receiving an inquiry from the lessee.

31. (original): The method of claim of claim 29, further comprising providing means for displaying the usage data, and means for receiving payment on the invoice.

32. (original): The method of claim 27, further comprising:
validating the obtained operating data;

verifying an approved configuration of the hardware product; and
saving the operating data.

33. (original): The method of claim 27, wherein the metering mechanism is provided at a first site, which is a same site as the hardware product, and wherein the processing device is provided at a second site remote from the first site.

34. (original): The method of claim 33, wherein the first site and the second site are Internet Web sites.

35. (original): The method of claim 27, wherein the metering mechanism and the processing device are provided at a site remote from the hardware product.

36. (original): The method of claim 35, wherein the site is an Internet Web site.

37. (original): A pay-per-use hardware financing plan, comprising:
 providing a hardware product to a client at a client site;
 providing a pay-per-use plan, the plan based on at least one metric acquired from the hardware product; and

 providing the client site with a mechanism, separate from the hardware product, that acquires the at least one metric, and transmits the at least one metric to a location remote from the client site.

38. (original): The pay-per-use hardware financing plan of claim 37, wherein the mechanism polls the hardware product to obtain the at least one metric.

39. (original): The pay-per-use hardware financing plan of claim 37, further comprising:

 generating a usage report based on the at least one metric;
 computing a pay-per-use invoice based on the at least one metric; and
 presenting the client with the pay-per-use invoice.

40. (original): The pay-per-use hardware financing plan of claim 39, further comprising making the usage report available to the client.

41. (original): The pay-per-use hardware financing plan of claim 27, wherein the at least one metric is transmitted to the remote site on a periodic basis.

42. (original): The pay-per-use hardware financing plan of claim 32, wherein the periodic basis is daily.

43. (original): The pay-per-use hardware financing plan of claim 27, wherein an initial configuration of the hardware product is stored at the remote location, and wherein the remote site:

validates the at least one metric; and

verifies a current configuration of the hardware product matches the initial configuration.

44. (original): The pay-per-use hardware financing plan of claim 37, further comprising providing a software metering agent with the hardware product.

45. (original): A hardware pay-per-use system, comprising:

means for receiving metrics data from the one or more hardware products;

means, coupled to the receiving means, for computing usage and billing data from the received metrics data;

means, coupled to the computing means, for generating an invoice based on the computed usage and billing data.

46. (original): The system of claim 45, wherein one or more hardware products are leased to a client for installation at a client site.

47. (original): The system of claim 46, wherein the client site is a site on a digital communications network.

48. (original): The system of claim 45, wherein the receiving means, comprises:

means for validating the received metrics data;

means for verifying a configuration of the one or more hardware products; and

means for storing the metrics data and the configuration.

49. (original): The system of claim 45, further comprising:

means, coupled to the one or more hardware products, for obtaining the metrics data from the one or more hardware products, comprising:

means, installed in the one or more hardware products, for collecting the metrics data, and means, coupled to the collecting means, for acquiring the collected metrics data, wherein the acquiring means is a standalone hardware device separate from the hardware products.

50. (original): The system of claim 45, further comprising:

means, coupled to the generating means, for generating a usage report based on the received usage data; and
means for presenting the usage report to a client.

51. (original): The system of claim 45, further comprising

means for presenting the invoice to a client; and
means for receiving a payment from the client based on the invoice.

52. (original): The hardware pay-per-use system of claim 45, wherein at least one of the one or more hardware products includes bundled software, and wherein the means for generating the invoice includes means for pricing utilization of the bundled software based on hardware metrics data.

53. (original): A device for acquiring metrics data from hardware products in a hardware pay-per-use system, the device coupled to the hardware products, the device, comprising:

a rules engine comprising one or more business rules for acquiring the metrics data;

a processor coupled to the rules engine, wherein the processor controls operation of the device; and

a data acquisition engine coupled to the processor, the data acquisition engine comprising programming whereby the metrics data are acquired from the hardware products, the programming including a transport protocol and interface for transporting the metrics data

from the hardware products to the device, and wherein the device is distinct from the hardware products.

54. (original): The device of claim 53, further comprising:

a communications engine, whereby the metrics data are encrypted, compressed and packaged for delivery to a remote location;

a display driver, whereby specified metrics data are provided for display; and

a database that stores the metrics data acquired by the device.

55. (original): The device of claim 53, wherein the processor, comprises:

means for testing a first transport mechanism from the hardware products to the device; and

means for testing a second transport mechanism from the device to a remote location.

56. (original): The device of claim 55, wherein the first and the second transport mechanisms include one or more of SNMP, WBEM, HTTP, HTTP/S and e-mail.

57. (original): The device of claim 55, wherein the means for testing the second transport mechanism includes uploading a test file from the device to the remote location.

58. (original): The device of claim 55, wherein the means for testing the first transport mechanism includes obtaining a known response from the hardware products.

59. (original): The device of claim 58, wherein the hardware products comprise metering agents, and wherein the known response is provided by the metering agents.

60. (original): The device of claim 53, wherein the metrics data are acquired by the device over the Internet.

61. (original): The device of claim 53, wherein the metrics data are acquired by the device over a digital data communications network.

IX. EVIDENCE APPENDIX

No evidence submitted.

X. RELATED PROCEEDINGS APPENDIX

No related proceedings.